

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2196 of 1993  
to  
FIRST APPEAL No 2201 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  
2. To be referred to the Reporter or not? : NO
  
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  
5. Whether it is to be circulated to the Civil Judge? : NO

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HEIRS OF HAJI MOHMADHUSEIN

Versus

ADDITIONAL LAND ACQUISITION OFFICER (SPECIAL)

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Appearance:

MR GM AMIN for Petitioners

MR SJ DAVE, AGP for Respondent No. 1

MR PRASHANT G DESAI for Respondent No. 2

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CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 10/05/2000

COMMON CAV JUDGEMENT ( PER: C.K.BUCH,J)

1. The appellants, by filing these First Appeals under Sec. 54 of the Land Acquisition Act,1894 (to be referred to as the "Act") read with sec.96 of the Code of Civil Procedure, 1908, have challenged the judgment and award dated 10th September, 1991 passed by the Judge of City Civil Court, Court No.11, Ahmedabad in Land Reference Case Nos. 23/88, 24/88, 32/88, 33/88, 34/88, 36/88 and 38/88. As these appeals arise from a common judgment and as common questions of facts and law are involved, the same are disposed of by this common judgment.

2. The Deputy Commissioner, Ahmedabad Municipal Corporation, by a letter bearing No. DPL-ACQ/1-1972-73 dated 23.5.1972, submitted a proposal for acquiring the lands under acquisition forming part of the final plots of T.P.Scheme No.24, Final Plot Nos. 2/1 to 2/4 situated in Rajpur-Haripur, Ta: City, District Ahmedabad, for housing accommodation of the employees of respondent no.2 Ahmedabad Municipal Corporation- Acquiring Body. After preliminary examination of the said proposal, notification under sec.4(1) of the Act was published in the month of September,1973. After following usual procedure, declaration under sec.6 of the Act was made and notices under sections 9 of the Act were served on the claimants. In response to the notices, claimants appeared and claimed compensation ranging between Rs.90/ to Rs.100/ per sq.mt. Land Acq. Officer, on the basis of the material placed before him, made his award under sec.11 of the Act on 23.9.1986 and awarded compensation to the claimants -land owners as under:-

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Ref.No. Appeal Survey Area Name of Amount Amount

No. No. sq.mt. the awarded demanded

Appellant sq.mt. sq.mt.

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26/88 2/2 1096.71 1.Saiyed 55.00 90.00

paiki Abdul Kari

& Ors.

23/88 -do- 1048.42 1.Heirs of -do- -do-

Mohd. Hussain

30/88 -do- 4193.92 1.Heirs of -do- -do-

Abdul Rasul

33/88 -do- 2096.71 Mohd.Yunus -do- -do-

34/88 -do- Dashrathbhai-40- -50-

38/88 -do- 2096.71 Heirs of -50- -90-

Gulam Hussain

24/88 -do- 2096.71 1.Mohd.Sharif-do- -do-

& Others.

22/88 -do- 4193.42 Heirs of -do- -do-

Claimants were of the opinion that the compensation offered by the Land Acq. Officer was inadequate and, therefore, they filed written applications under sec.18 of the Act requiring Land Acq. Officer to refer their applications to the City Civil Court, Ahmedabad for determination of the market value of the acquired lands. Accordingly, said applications were referred by the Land Acq. Officer to the City Civil Court, Ahmedabad which came to be numbered as Land Ref. Cases as referred to in para-2 above. All these references were consolidated and parties led common evidence in Land Ref. Case No. 26/88, as main case.

3. There is no dispute about the ownership of the lands acquired. Joint measurements of the lands were carried out by the District Inspector, Land Records and there is no dispute as to the ownership or measurements of the lands acquired which is reflected in para-2 of the judgment and award of the Reference Court. Lands under acquisition are in the residential zone as per the TP Scheme No.24 and the same are acquired to provide housing accommodation to the employees of respondent no.2 Ahmedabad Municipal Corporation-the Acquiring Body.

4. On receipt of the reference applications under sec.18 of the Act, Land Acq. Officer referred the same to the Reference Court. Respondents were served with notices by the Reference Court and written statement was filed by the respondents- original opponents. In view of the contentions raised by the land owners, Reference Court framed two main issues vide exh.12. Reference Court, after appreciating oral as well as documentary evidence produced before him, by the impugned judgment and award, awarded additional amount of Rs.25/ per sq.mt. as compensation over and above the amount of compensation awarded by the Land Acq. Officer. As the appellants were not satisfied with the additional amount of compensation awarded by the Reference Court, they preferred these appeals and prayed that appellants-claimants should be awarded compensation at the rate ranging between Rs.90/ per sq.mt. to Rs.100/ per sq.mt. as claimed by them before the Land Acq. Officer. Reference Court, while awarding additional compensation at the rate of Rs.25/ per sq.mt., has considered oral as well as documentary evidence including map produced by the Land Acq. Officer through the government pleader vide mark 14/1. Map shows that the

lands under acquisition are demarcated as Final Plots in TP Scheme No.24 of Rajpur-Hirupr. Reference Court has evaluated oral evidence of the witnesses namely (i) Anantray Bhulabhai, (ii) Rajnikant Bhogilal, and (iii) Girsih Dashrathbhai, and has also considered documents produced by the claimants. Respondents have not led any oral evidence before the Reference Court. On perusal of the judgment of the Reference Court, it transpires that the oral submissions made by respondents-opponents are considered by the Reference Court. Grievance of the learned counsel appearing for the appellants- land owners is that the Reference Court has failed to appreciate documentary evidence produced by the land owners and the amount awarded is grossly inadequate. It is argued that irrelevant aspects are considered by the Reference Court and, therefore, finding as to the market value of the acquired lands recorded by the Reference Court is not in accordance with law or facts available on record. Mr. Amin, learned counsel for the appellants, submitted that the fact that erection of some hutments by Vaghari community in the nearby land, could not have been looked into at all by the Reference Court. He also pointed out that lands, on the date of publication of notification under sec.4(1) of the Act, were not converted into NA use but this aspect was not very important as the lands were part of Final Plots of TP Scheme No.24 and the same are forming part of residential zone of the said TP Scheme. The amount earned by the intervenor for a third party, should not have been ignored and the documents executed on the strength of the agreement of sale executed much prior to the date of notification under sec.4(1) of the Act, ought to have taken into account for determination of the market value of the lands acquired. During the course of submissions, Mr. Amin further submitted that this is a case wherein Reference Court should have awarded even some more amount than prayed by the claimants considering the facts and circumstances of the case.

5. In response to the submissions made by learned counsel Mr. Amin for the claimants, Mr. P.G.Desai, learned counsel appearing for respondent no.2 Acquiring Body has submitted that the amount awarded by the Reference Court is most adequate. Not only that, according to Mr. Desai, same is some what on higher side and, therefore, this Court should not interfere with the findings recorded by the Reference Court.

6. Mr. P.G. Desai has submitted that the market value asserted by the Reference Court is on the strength of evidence led by the appellants themselves. Lands

acquired were not converted into NA lands. Therefore, sale-deeds executed for sale in respect of a N.A. Plot cannot be taken as a comparable sale. Map produced before the Reference Court indicates that lands are comparatively far off from the well-developed area of city of Ahmedabad. Acquisition is of large parcels of lands. So also, the same cannot be compared with a sale in respect of a small piece of land.

7. We have considered oral submissions advanced by learned counsel appearing for the parties in light of evidence available on record. On perusal of the record of Reference Court, we found that Acquiring Body had not resisted the reference applications by filing written objections. Averments made in the applications have remained unchallenged. Vide list of documents at exh.14, opponents have tried to produce documentary evidence consisting of a map of the lands under acquisition. On careful perusal of the map produced by the Acquiring Body, it clearly transpires that lands under acquisition are neighbouring lands to Final Plot No.2/5 where Uganda Park Society is developed and on one piece of land, there is one Sardar Patel High School. Marine Drive Society is also situated in the adjoining area and the lands are abutting on the main road of T.P.Scheme No.24. In short, the claimants have successfully established, by oral as well as documentary evidence, that the lands under acquisition, even on the date of publication of notification under sec.4 of the Act, were having much potentiality irrespective of the fact that same were not formally converted into N.A. lands. Oral evidence of claimant Mahommad Yunus Mahommad Rasul Shaikh, exh.12, gives clear picture of the situation of the lands. This witness has denied that hutments in the neighbouring area has effect on the potentiality of the lands in question. He has also denied that area is sensitive so far as communal tranquility is concerned. He has positively stated that on the date of publication of notification under sec.4 of the Act, market value of the lands of the relevant area was Rs.90/ to 100/ per sq.mt. Documents exh.60 to 65 are proved by witness Anantray Bhulabhai vide exh. 49. Witness Anantray has accepted the suggestion put forward by the advocate appearing for the opponent that Shahe Alam area was one of the sensitive areas and during communal riots of 1969. Area where acquired lands are situated was affected worstly. Witness Rajnikant Bhogilal has supported the evidence of witness Anantray Bhulabhai. Father of witness had purchased certain pieces of lands from Ramaben Kanubhai and Urmilaben Anantray. Before execution of sale-deeds, agreement to sale were executed and registered sale-deeds

were executed on 25.7.1973 and 27.7.1973. In that transactions, market value of the land was shown and determined at Rs. 95/- per sq.yds. He is one of the witness in the document and transaction had taken place in his presence. During cross-examination, it was deposed by the witness as under :-

Above sentence is relevant while appreciating the oral version of witness Anantray Bhulabhai exh.49, wherein he has stated that consideration of the land was determined at Rs. 70/- per sq.yd. Similar situation emerges from the oral evidence of witness Girish Dasharathbhai exh.67. Sale-deeds referred and proved by this witness examined by the claimants side, are undisputedly related to the lands situated in the area of near vicinity of the lands under acquisition. Date of notification under sec.4 of the Act in the case on hand is September, 1973. Mr. Amin, learned counsel for the appellants, therefore, has rightly argued that sale-deeds exh.60 to 65 should have been considered by the Reference Court as contemporaneous sale or sale transaction of similar type of land in the same area. Transaction of comparatively small plots cannot be ignored totally. Contemporaneous Sale can provide acceptable base line for market value of a piece of land. We agree that contemporaneous sale can be ignored by the Reference Court, but for ignoring the same, Reference Court must assign cogent and convincing reasons. Sale-deeds produced and proved by the witness are not sale of stray pieces here and there at some different place or at some long distance. As the lands acquired were to be converted into NA lands and as on some lands adjoining to the lands under acquisition, unauthorised hutments were erected by the allegedly unauthorised persons, reasonable reduction can be made while determining the market value. Mechanical application of 1/3rd reduction in the case of acquisition of large parcels of lands or acquisition of agricultural lands qua N.A. lands, may cause injustice to the land holders when undisputedly the lands under acquisition are part of TP Scheme No.24 of a developed city and notified in the residential zone. This is a case wherein claimants could have prayed compensation even at the more rate than Rs. 110/- per sq.mt. Documents relied upon by the claimants are of Rs.95/- per sq.yd. Mathematically, if market rate is Rs. 95/- per sq.yd., it would be higher in terms of sq.mt. The purpose of acquisition is also relevant in such cases.

Acquiring Body has acquired these lands to construct residential houses for the staff members. A local-self government like Municipal Corporation of City of Ahmedabad would not acquire lands for its staff members in the area which can be termed as too remote and all these aspects, if looked into, the grievance of the claimants that the market value determined by the Reference Court is inadequate, shall have to be accepted. In certain cases, mathematical exercise would not give exact market value of the land. In catena of decisions, the courts have awarded just compensation even by applying rule of thumb considering totality of facts and circumstances of the case, situation of land and in light of evidence available on record.

9. Document exh.60 dated 26.7.1973 refers to an agreement of sale dated 26.6.1972 in respect of very plot admeasuring 400 sq.yds. at the rate of Rs. 70/- per sq.yd. Land of this document is part of TP Scheme No.24 of Maninagar situated in Final Plot No.63. Document exh.61 is also situated in that very area and this document also refers to one agreement of sale dated 31.7.1972. Same is the case of document exh.62. Document exh.63 relates to lands admeasuring 405.50 sq.yds. situated in sub-plot no.6 of Final Plot No.74 of TP Scheme No.24 of Maninagar. Document exh.64 is an important document relates to a land situated in a very near vicinity of the lands under acquisition and is executed in favour of Marine Drive Co.Op. Housing Society. This document was executed on 6th May, 1969. The person who executed sale-deed had sold undivided 1/3rd interest over the lands admeasuring 404 sq.yds. out of 1212 sq.yds. of lands situated in TP Scheme No.24 of Maninagar. Bare reading of this document gives an impression that this document cannot be considered, but on close scrutiny, it transpires that though these lands are of TP Scheme No.24 of Maninagar, originally lands were of villages Rajpur-Hirpur where present acquired lands are situated. Covenant of document exh.64 clarifies the situation of the lands sold vide document exh.64. This sale may not be a contemporaneous sale, but it provides base-line to determine market value of the lands under acquisition. Documents produced and proved by the claimants are genuine sale transactions. Documents are proved by competent witnesses. It is not the say or submission of respondents that these sale transactions are doubtful or bogus. No such specific plea was raised by the respondents before the Reference Court. We do not agree that merely because there is one crematorium of Vaghari community in nearby area, lands under acquisition would loose their potentiality. It is

the experience of well-developed cities that crematoriums are in the heart of city or in thickly populated areas. We cannot agree that the finding recorded by the Reference Court that unprecedented riots in the city of Ahmedabad in the year 1969 can adversely affect the market value or potentiality of the lands in the year 1972 or 1973. We also do not agree that admission on the part of one of the witnesses examined by land owner that the area was considered as notorious area or was full of bootleggers, can dislodge legitimate claim of the appellants on the ground of potentiality. This type of stray incidents or activities normally are of very temporary nature. Ratio laid down by this Court in the case of Manguben, wd/o Natwarlal Hiralal Patel & Ors. v/s Spl. Land Acq. Officer, Ahmedabad, reported in 1992(2) G.L.R. 944 to the facts of the present case. In the case of Manguben (supra), this Court has considered building potentiality and not the embargo of existing green belt in the T.P.Scheme. We would like to quote observation of the Apex Court made in the decision rendered in the case of Administrator General of West Bengal v/s Collector, Varanasi, reported in AIR 1988 SC 943, wherein the Apex Court has observed as under :-

" The determination of market value of a piece of land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market-value of a piece of property, for purposes of S.23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market value, as one author put it, is the prediction of an economic event, viz., the price-outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at our about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available."

10. We agree that sale instances proved by the appellants are not of immediate adjacent lands, but they give rising trend of market value of lands situated in the vicinity of village Rajpur-Hirpur which were subsequently divided into final plots of various town planning schemes.

11. According to us, error in appreciating oral as well as documentary evidence especially the documents providing sale instances of the lands situated in the vicinity or the same area, can be termed as an error apparent so far as Reference Court is concerned and the same would not be justified. However, in view of discussions as above, in our opinion, in this case, treating entire lands as similarly situated and equal type of land, market value of the land should be determined by giving reasonable deduction of Rs.5-00 per sq.mt. and should be determined at the rate of Rs.85.00 per sq.mt. Accordingly, we determine market value of the lands under acquisition at the rate of Rs.85.00 per sq.mt. So, we are inclined to interfere with the findings of the Reference Court by enhancing market value and modifying the award in the above terms.

12. In the result, appeals are partly allowed with costs. Judgment and award passed by learned Judge, City Civil Court, Court No.11, Ahmedabad on 10th September, 1991 in Land Ref. Case Nos. 23/88, 24/88, 32/88, 33/88, 34/88, 36/88 and 38/88 is ordered to be modified to the extent that market value of the lands under acquisition are determined at the rate of Rs.85.00 per sq.mt. Appellants claimants shall be entitled to all other statutory benefits on the awarded amount under sec.23(1-A), 23(2) and interest under sec.28 of the Act. However, it is made clear that appellants claimants shall not be entitled to solatium on the amount under sec.23(1-A) and no amount of interest shall be paid on the amount of solatium as per the settled legal position. Decree to be drawn accordingly.

10.05.2000

[ M.H. KADRI, J ]

[ C.K. BUCH, J ]

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